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**APPENDIX E-1
SAMPLE BUSINESS POINTS MEMORANDUM (BPM)**

TO: (contact person), Developer

FROM: (contact person), United States of America, represented by the Secretary of the Air Force

RE: Systems Acquisition Management Support (SAMS) Complex at Los Angeles Air Force Base (LAAFB)

DATE: _____, 2001

This Business Point Memorandum presents the current status of a work in progress. None of the terms and conditions described herein is intended to bind either party in any way. The memorandum is subject to the following:

1. SAF/MII approval of this transaction; and
2. Final negotiation, preparation and execution of the Purchase and Sale Contract (the “Agreement”) by both parties;

Selected Offeror: (developer)

Parties to the Agreement: The Selected Offeror; and, the United States of America represented by the Secretary of the United States Air Force (the “Secretary”).

Purpose: The conveyance of a large portion of the LAAFB’s existing real property to Selected Offeror, in exchange for completion of SAMS Complex for the Air Force (the “Consideration”) on a portion of the LAAFB’s remaining property (or alternatively on property near the base), as described in solicitation for SAMS complex and Selected Offeror’s proposal.

Term: Construction period of the SAMS complex (plus the term of the possible building and/or ground lease).

Site: The existing properties of LAAFB, total approximately 113 acres, located in El Segundo, Hawthorne, and Sun Valley, California. The Air Force and the Selected Offeror will enter into the Agreement, with respect to the Area A, Lawndale Annex and Sun Valley

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sites and part of Area B (or alternatively on property near the base) together with equipment and other personal property (the “Personal Property”), which will set forth the terms and conditions under which the Air Force will convey fee simple title to these LAAFB assets at settlement (to “Close” or the “Closing”).

In the Agreement, the property shall be conveyed by the Air Force in an “AS IS”, “WHERE IS” condition and subject to certain provisions related to environmental condition, existing restrictions, and easements. The property will be conveyed by the Air Force to the Selected Offeror by a quitclaim deed, subject to all existing restrictions and easements.

Conveyance:

Conveyance of the properties to the Selected Offeror shall be subject to documentation provided to the Air Force that the Selected Offeror is in compliance with the terms of construction financing and the provision of evidence reasonably acceptable to the Air Force that the Selected Offeror has sufficient financing (debt and equity) to complete those portions of the SAMS Complex, which may remain to be completed after the deed conveyance of the property by the Air Force.

The Selected Offeror shall be responsible for obtaining all federal, state and local permits, licenses and other approvals required for construction and operation of the SAMS Complex. The Selected Offeror shall obtain all permits necessary for the commencement of construction and shall commence construction by _____, 2002.

Building Lease:

Upon the execution of the Agreement, the Air Force may initiate a building lease for a portion of Area B with the Selected Offeror, if necessary. Upon expiration of the Lease, title to the leased improvements shall vest with the Air Force.

Ground Lease:

Pending the conveyance of the property in accordance with terms and conditions of the Agreement, the Secretary and the Developer may enter into a Ground Lease for all or for certain portions of the property. The Ground Lease shall be for a specified term of years, and in accordance with the other terms and conditions specified in said Lease. The Ground Lease may be terminated with respect to any portion of the property upon the conveyance of such portion to the Selected Offeror. Upon expiration of the Lease, title to the leased Land shall vest with the Air Force

Design/Build Contract:

The Selected Offeror shall design and construct all site improvements, government office space and associated improvements to-

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	<p>gether comprising the SAMS Complex in accordance with the terms of the solicitation, the Selected Offeror's proposal and the Agreement. A substantially complete form of the Design/Build Contract, including the date construction will commence and the length of the construction period shall be attached as an exhibit to the Agreement.</p>
Design/Construction Agent	<p>The Air Force will monitor the site development work and all construction of the SAMS complex and associated improvements; approve the payment of construction draws; and confirm acceptance of the SAMS Complex upon completion. Prior to commencement of site development and construction of the SAMS Complex, the Resident Architect shall confirm in writing that the plans and specifications provide for the construction of the SAMS Complex in conformance with the requirements of the Design/Build Contract and that the SAMS Complex can be constructed as set forth in the Design/Build Contract.</p>
Financing:	<p>The Selected Offeror shall arrange for the private funding of the SAMS Complex; such funding may include construction permanent first mortgage debt and developer provided cash equity in amounts required to complete the funding of the SAMS Complex. The exact amount and timing of any differential lease payments will be determined during the period of exclusive negotiations.</p> <p>If the Selected Offeror secures construction/permanent first mortgage debt financing for the SAMS Complex, such financing shall be secured at the best terms available at the time the Agreement is executed, subject to the approval of the Air Force.</p>
Proof of Equity:	<p>Within ten (10) days of the effective date of this BPM, the Selected Offeror shall provide proof of equity including, but not limited to amount and form of equity, location and number of account, financial institution and name of contact at the financial institution. For equity other than cash, describe the type, condition and location of the equity and the form of legal instruments necessary to transfer ownership of the equity to the SAMS Complex. Also describe how the value of the equity will be determined.</p>
The Selected Offeror's Failure to Close:	<p>In the event the Selected Offeror determines that it is unable to close on all or part of the Property and notifies the Air Force in writing of such inability, the Air Force shall be entitled to terminate this Agreement, in which event the Selected Offeror shall forfeit all consideration made to the Air Force and/or improvements made by the Selected Offeror on any Property that has been conveyed to the Selected Offeror, and such payments and improve-</p>

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ments shall be retained by the Air Force. In addition, title to any property transferred shall return to the Air Force. Relative to the foregoing, the parties recognize that the Air Force will incur expense in connection with the transaction contemplated by this Agreement and that it is extremely difficult and impractical to ascertain the extent of the detriment to the Air Force caused by such breach by the Selected Offeror under this Agreement and the failure of the consummation of the transaction contemplated hereby or the amount of consideration the Air Force should receive as a result of such breach or default.

Upon the occurrence of any default by the Developer, the Secretary may terminate this Contract, without any cost or liability; provided, however, that the Secretary shall provide the Developer with at least sixty (60) days prior written notice of any such termination. The Secretary shall also be entitled to pursue any and all remedies available at law and/or in equity.

- Security Deposit: Within ten (10) days of the effective date of this BPM, the Selected Offeror shall provide a cash security deposit in the amount of \$250,000. This amount shall be held by an Escrow Agent in accordance with Appendix E-2, Exhibit J of the Agreement.
- Transition Conference: The Selected Offeror shall attend a transition conference once the security deposit is made. The purpose of the conference is to identify all tasks and documents that must be completed prior to closing, and to define an Air Force/Selected Offeror transition plan which addresses, but is not limited to, security, mobility, utility, facility operations, and maintenance and management requirements.
- Inspection Period: For a period of 60 days following the effective date of this BPM, the Selected Offeror and its authorized agents and representatives shall be authorized to enter upon the Property at all reasonable times during normal business hours to conduct inspections and tests to determine the suitability of the property for commercial development (the "Inspection Period"). The Selected Offeror shall bear the costs of all inspections and tests. The Selected Offeror and its agents or representatives shall (a) not unreasonably disturb the Property; (b) not damage any part of the Property or any part of the Property or any personal property owned or held by Air Force; (c) not injure or otherwise cause bodily harm to Air Force agents, contractors and employees; (d) maintain general liability insurance in terms and amounts to cover any accident arising in connection with the presence of the Selected Offeror, its agents and representatives on the Property; (e) restore the surface of the land to the

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condition it was found before any such inspections were undertaken; and (f) conduct its work at all times in strict compliance with security procedures on the base.

The Selected Offeror indemnifies and holds the Air Force harmless from any and all liens and expenses arising out of the Selected Offeror's tests or studies during the Inspection Period.

Title:

Title to the Property shall be evidenced by an ALTA Extended Coverage Form B (latest edition) owner's policy or policies of title insurance issued by Associated Title Company (referred to herein either singularly or collectively as the ("Title Policy")), including such endorsements as the Selected Offeror may reasonably require, with liability in the full amount of the Consideration insuring good and marketable fee simple title to the Property as vested in the Selected Offeror pursuant to the Deed(s), to be free and clear of all covenants, conditions, rights, rights-of-way, "easements, liens, encumbrances or any other matters affecting title to or use of the Property, except (a) the "Air Force Exceptions", as set forth in those certain Covenants, Conditions and Restrictions imposed by the Air Force with respect to certain environmental matters and (b) such other matters affecting the title to or use of the Property as may be agreed to by the Parties (the "Approved Exceptions"). The Title Policy shall be issued at the Closing, as defined below with all general exceptions deleted and subject only to the Air Force Exceptions and the Approved Exceptions.

Within 30 days of the effective date of this BPM, the Selected Offeror shall cause the title company to issue a commitment for an owner's title insurance policy in the full amount of the Consideration.

Survey:

Prior to Closing, the Air Force shall furnish to the Selected Offeror, in triplicate, a survey of the Property, including: (i) the outer boundaries of the Property, and (ii) The Title Policy.

The Selected Offeror shall pay:

- (1) Any escrow agent's fee;
- (2) All other costs incurred by it in the satisfaction of its obligations under this Agreement;
- (3) The cost of the Title Policy; and
- (4) Recording costs.

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The Air Force shall pay: (1) The cost of relocating its communications equipment (if necessary)

(2) All other costs incurred by it in the satisfaction of its obligations under this BPM; and

(3) The costs of moving its equipment and personnel (if necessary)

Air Force Approval: The Air Force shall have the standard approval rights for actions of the Selected Offeror, including the right to approve the following:

- (i) Incurrence of additional debt by the SAMS Complex
- (ii) Assignments
- (iii) Conveyance of Project ownership

Statutory Requirements: Compliance with the following federal statutes is required:

18 USC 874 and 40 USC 276c Copeland Act
 41 USC 423 Procurement Integrity
 31 USC 1352 Payments to Influence Certain Transactions
 41 USC 327 et seq. Contract Work Hour and Safety Requirements Act
 40 USC 276a et seq. Davis Bacon Act
 41 USC 10b Buy American Act – Construction
 41 USC 601 et seq. Contract Disputes Act
 10 USC 2692 Storage and Disposal of Toxic and Hazardous Material

This memorandum accurately describes the current understanding of the parties with regard to the SAMS Complex as of the date first mentioned.

This document may be executed and delivered by facsimile transmission and in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

United States Air Force

By: _____

Title: _____

Date: _____

Selected Offeror

By: _____

Title: _____

Date: _____

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**APPENDIX E-2
PURCHASE, SALE AND DEVELOPMENT CONTRACT
by and between**

**SECRETARY OF THE AIR FORCE, as Seller
And
[NAME OF DEVELOPER], as Developer
Dated _____, 2001.**

Los Angeles Air Force Base, California

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LIST OF EXHIBITS

- EXHIBIT A – SAMS Facility Requirements And design Guide
EXHIBIT B - Terms and Conditions Applicable to the SAMS Construction
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EXHIBIT D - Description of Land and Personal Property Situation Thereon
EXHIBIT E - Form of Building Lease - (To be deleted if not used)
EXHIBIT F - Form of Ground Lease - (To be deleted if not used)
EXHIBIT G - Form of Termination and Release of Building and/or Ground Lease
EXHIBIT H - Form of Quitclaim Deed

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EXHIBIT I – Developer's Proposal for SAMS Project

EXHIBIT J - Escrow Instructions

THIS PURCHASE, SALE AND DEVELOPMENT CONTRACT including all Exhibits thereto, (this "Agreement") is made and entered into as of _____, 2001, by and between **THE UNITED STATES OF AMERICA** represented by **THE SECRETARY OF THE AIR FORCE** (the "Secretary"), and **[NAME OF DEVELOPER]**, a _____ (the "Developer"). The Secretary and the Developer may be referred to jointly as the "Parties," and each separately as a "Party."

RECITALS

WHEREAS, pursuant to the Solicitation and the Selected Proposal, the Developer has agreed to become obligated to provide, or to design and construct, the Systems Acquisition Management Support (SAMS) complex, for the use of Space and Missiles Systems Center, Los Angeles Air Force Base, California; and

WHEREAS, in accordance with and in furtherance of the Solicitation and the Selected Proposal, the Secretary and the Developer hereby agree that, subject to the terms and conditions and for the consideration set forth below, the Secretary shall convey and the Developer shall purchase the Land, including the Personal Property situated thereon;

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties hereby agree as follows:

1. Definitions. The terms defined in this Section 1 and in the Recitals (except as otherwise expressly defined in this Agreement or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings specified in this Section 1 and the Recitals.

"Act" means the 2001 Defense Authorization Act, 106 Pub. Law 398, 114 Stat. 1654, Title XXVIII, Subtitle D, Section 2861, Land Conveyance, Los Angeles Air Force Base.

"Applicable Laws" means all federal, state, and local (city, county and otherwise) laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which may be applicable to the Developer, the Land, including the structures thereon, and the Improvements, and/or any person located at or near the Land during the term of this Agreement whether presently in force or enacted after the Effective Date.

"Authorized Representative" means with respect to all parties under this Agreement, an officer, a principal, an agent or other person who is authorized to act on behalf of and whose actions are binding upon that party. As of the date of execution of this Agreement, the primary Authorized Representative of the Developer is _____; and of the Secretary is _____.

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_____. Any party may designate additional or substitute persons to act as an Authorized Representative on its behalf at any time by a written notice to the other parties.

"Business Day" means any day other than (i) a Saturday, (ii) a Sunday, or (iii) a day on which the federal government is generally closed by statute, regulation or executive order.

"Closing" is as defined in Section 4.

"Closing Date" is as defined in Section 4.

"Effective Date" means _____, 2001.

"Improvements" means, collectively, buildings or other facilities currently existing or to be constructed on the Land.

"Installation" means Los Angeles Air Force Base, California.

"Land" means collectively, those parcels described in Exhibit D to this Agreement.

"Land Records" means the Registrar-Recorder/County Clerk, Real Estate Records for the County of Los Angeles, California

"Leased Premises" is as defined in the Real Estate Building Lease.

"Newly Constructed Improvements" means the Systems Acquisition Management (SAMS) complex as newly constructed by the Developer in accordance with the terms and conditions of this Agreement.

"Parcel" means as applicable, each individual tract of the Land as described in Exhibit D to this Agreement.

"Project" means Systems Acquisition Management (SAMS) complex which either is already in existence or is to be designed and constructed for the use of Space and Missiles Systems Center, Los Angeles Air Force Base, California, in accordance with the Solicitation and Exhibit I.

"Personal Property" means all those facilities, fixtures and improvements that are mutually agreed to by the parties to be fixtures in any building on the Land, as described in Exhibit D.

"Quitclaim Deed" means a deed executed and delivered by the Secretary to convey the Land, which shall be substantially in the form attached to this Agreement as Exhibit H.

"Selected Proposal" means collectively the proposal submitted by or on behalf of the Developer and selected by the Secretary as the winning proposal in response to the Solicitation, together with the Final Plans, the final construction schedule and the Construction Management Plan

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approved by the Air Force, and including any approved amendments, modifications, and/or supplements attached hereto as Exhibit I.

"Real Estate Building Lease" means that certain Lease of the SAMS complex, made by and between the Secretary, as lessee and the Developer, as lessor, with respect to the Leased Premises, which shall be substantially in the form attached to this Agreement as Exhibit E.

"Real Estate Ground Lease" means that certain Lease of Property, dated as of even date herewith, made by and between the Secretary, as lessor and the Developer, as lessee, with respect to the Leased Premises, which shall be substantially in the form attached to this Agreement as Exhibit F.

"Solicitation" means United States Department of the Air Force Request for proposal for the SAMS complex including any and all amendments.

"Termination and Release of Lease" means a termination and release executed and delivered by the Secretary and the Developer to evidence termination of the Building and/or Ground Lease with respect to all or a portion of the Land, which shall be substantially in the form attached to this Agreement as Exhibit G.

2. Obligation to Sell and Obligation to Purchase. The Secretary agrees to sell and transfer to the Developer, and the Developer agrees to purchase and accept from the Secretary, upon the terms and conditions set forth in this Agreement, all of the Secretary's right, title and interest in and to the Land and the Personal Property situated thereon.

3. Consideration.

a. As consideration for the conveyance of the Land, the Developer shall provide, or shall design and construct, the SAMS complex in accordance with the Selected Proposal and the terms and conditions set forth in this Agreement, and in particular Exhibit A and B, but also including all Exhibits hereto. Said complex must comply with the seismic and safety design standards for Los Angeles County, California, in effect at the time the Secretary takes possession of the facility.

b. **Lease of Building as Additional Consideration.** As additional consideration for the construction of the SAMS complex, the Secretary and the Developer shall enter into a Real Estate Building Lease (the "Building Lease"). The lease shall be for a term of XX years (or as otherwise agreed, not to exceed 10 years) unless sooner terminated in accordance with its terms. In order to evidence a termination of the Building Lease, the Parties shall execute a Termination and Release of Lease. A Termination and Release of Building Lease shall be recorded at the Developer's expense in the Land Records.

c. **Lease of Land Prior to Closing; Termination of Ground Lease.** Pending the conveyance of the Land in accordance with terms and conditions of this Agreement, the Secretary and the Developer shall enter into a Real Estate Ground Lease (the "Ground Lease") as

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additional consideration for the construction of the SAMS complex. The Ground Lease shall be for a term of XX years (or as otherwise agreed) unless sooner terminated in accordance with its terms, including that the Ground Lease shall be terminated with respect to a Parcel upon the conveyance of such Parcel to the Developer under this Agreement. In order to evidence a termination of the Ground Lease upon the conveyance of a Parcel, the Parties shall execute a Termination and Release of Lease. A Termination and Release of Ground Lease shall be recorded at the Developer's expense in the Land Records concurrently with the recordation of the Quitclaim Deed with respect to the applicable Parcel.

4. Time and Place of Closing. Subject to the terms and conditions set forth in this Agreement, the closing of the purchase and sale of each Parcel (the "Closing") shall take place within ninety (90) days following the satisfaction of the conditions set forth in Section 11 with respect to such Parcel, on a date mutually acceptable to the Parties (the "Closing Date"); provided, however, that the Secretary may agree to extend any Closing Date to a later date upon the reasonable written request of the Developer.

5. Survey. The exact acreage and legal description of real property to be conveyed shall be determined by a survey per ALTA (American Land and Title Association) Extended Coverage Form B, or satisfactory to the Secretary. The cost of the survey shall be borne by the recipient of the property. To assist the Developer in accomplishing said survey, the Air Force will provide a preliminary survey accomplished by the Army Corp of Engineers.

6. Title.

a. Title to the Land to be conveyed under this Agreement at Closing shall be fee simple, good, marketable and the Land shall be free and clear of all liens, encumbrances, easements, reservations, limitations, covenants, conditions and restrictions, other than the following "Permitted Exceptions":

(1) any and all other liens, encumbrances, easements, reservations, limitations, covenants, conditions and restrictions on the Land arising on or after the Effective Date;

(2) the requirements of any federal, state or municipal laws, ordinances, rules and regulations;

(3) the matters set forth in Exhibit C;

(4) any leases as may be executed by or on behalf of the Developer on or after the Effective Date;

(5) such other items as are agreed to by the Developer and the Secretary in writing; and

(6) any matter of public record.

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b. Developer has obtained and reviewed a title report or title insurance commitment from a title insurance company, title attorney or other party satisfactory to Developer. Other than as expressly set forth in the applicable Quitclaim Deed, the Secretary makes no representations or warranties about the quality of title to any Parcel and the Secretary shall have no obligations under any circumstance to cure any exceptions to title or other title objections. By its execution of this Agreement, (i) Developer is deemed to have waived any title exceptions or title objections which are (or would be) disclosed by any such title report or title insurance commitment, (ii) Developer is deemed to have conclusively accepted any such title exceptions or objections, and (iii) Developer agrees to accept each Parcel subject to any such title exceptions or objections and proceed to Closing as provided in this Agreement.

7. Condition of Land; Environmental Matters.

a. The Developer shall purchase the Land in its "AS IS," "WHERE IS" condition without any representation or warranty by the Secretary concerning the Land's condition and without obligation on the part of the Secretary to make any alterations, repairs or additions, except as may be otherwise expressly set forth in this Agreement. The Secretary shall not be liable for any latent or patent defects in the Land to the extent mandated by applicable laws. The Developer acknowledges that the Secretary has made no representation or warranty concerning the condition and state of repair of the Land nor any agreement or promise to alter, improve, adapt, or repair the Land, except as may be otherwise expressly set forth in this Agreement.

b. The Developer shall comply with all laws, regulations and ordinances applicable to its operations on the Land which have been or shall be issued by the United States Environmental Protection Agency, or any other federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The Developer shall be responsible for obtaining at its cost and expense any environmental permits required for its operations on the Land, independent of any existing permits. Disposal of any toxic or hazardous materials generated in connection with the operations of the Land by the Developer or its tenants or transferees shall be in compliance with all applicable laws and regulations.

c. The Developer shall indemnify, save, and hold harmless the Secretary from any claims for damages, response or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Developer, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, giving rise to Secretary liability, civil or criminal, or responsibility under federal, state or local environmental laws. This Condition shall survive the expiration or termination of this Agreement, and the Developer's obligations hereunder shall apply whenever the Secretary incurs costs or liabilities of the types described in this Section.

8. Due Diligence.

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a. **Right of Entry and Inspections.** The Developer, its employees, agents and independent contractors, shall perform such surveying, inspecting, mapping, conducting soils, percolation, geological, groundwater, wastewater and other physical engineering, environmental, and other investigations and studies, performing economic and marketing feasibility and other studies, obtaining appraisals, and such other work and investigations, as it shall deem necessary, prior to Closing. Prior to Closing, the Developer, its employees, agents and independent contractors may further perform inspection and testing of any improvements to the Property including, but not limited to, buildings, equipment, fixtures, the Personal Property or any other personal property associated with the Property. The Developer and its agents or representatives shall (a) not unreasonably disturb the Property; (b) not damage any part of the Property or any part of the Property or any personal property owned or held by Air Force; (c) not injure or otherwise cause bodily harm to Air Force agents, contractors and employees; (d) maintain general liability insurance in terms and amounts to cover any accident arising in connection with the presence of the Developer, its agents and representatives on the Property; (e) restore the surface of the land to the condition it was found before any such inspections were undertaken; and (f) conduct its work at all times in strict compliance with security procedures on the base. The Developer indemnifies and holds the Air Force harmless from any and all liens and expenses arising out of the Developer's tests or studies during the Inspection Period.

b. **Delivery of Documents.** The AF shall deliver to the Developer for review all documents, letters, correspondence, communication and instruments pertaining to the Property without limitation. Documents may include those portions of the most recent Environmental Base Line Survey (hereinafter referred to as the "EBS"), which pertain to the Property, and any relevant analyses as required by statutes, which pertain to the Property.

c. **Approvals and Consents.** The Developer shall be responsible for fulfilling, at its own cost and expense, any applicable state and federal requirements including, without limitation, the acquisition of all licenses, governmental permits, environmental permits and all other approvals and consents as may be required by the Developer for its intended development and use of the Property. The AF shall reasonably cooperate with the Developer and all governmental officials in obtaining the aforementioned approvals.

9. Secretary's Representations. The Secretary represents that as of the Effective Date:

a. The Secretary has full power and authority to enter into and, subject to the conditions contained in this Agreement, to perform said terms and conditions, and this Agreement constitutes a legal, valid and binding obligation of the Secretary enforceable in accordance with its terms.

b. Subject to the conditions contained in this Agreement, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will violate any agreement to which the Secretary is a party or by which the Secretary is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental agency to which the Secretary is subject.

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c. The above representations shall be deemed repeated at Closing and it shall be a condition to the Developer's obligation to close under this Agreement that such representations and warranties are true and complete in all material respects.

10. Developer's Representations and Warranties. The Developer represents and warrants that as of the Effective Date:

a. The Developer is a _____ which is duly organized, validly existing and in good standing under the laws of the State/Commonwealth of _____, and is qualified to transact business under the laws of the State of California, with full power and authority to enter into and to perform the terms and conditions of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally. The Developer has obtained all consents required under the Developer's organizational documents with respect to the Developer's execution, delivery and performance of this Agreement including, without limitation, the consent of the Developer's partners/members.

b. _____, _____ of the Developer, has the full right, power and authority to execute this Agreement on behalf of the Developer and, subject to the conditions contained in this Agreement, to execute the documents required under this Agreement on behalf of the Developer. _____ has obtained all consents required under the Developer's organizational documents to execute, on behalf of the Developer, all documents required to be executed by the Developer under this Agreement.

c. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will violate any agreement to which the Developer is a party or by which the Developer is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental agency to which the Developer is subject.

d. To the Developer's knowledge, there is no claim, action, proceeding or investigation pending or threatened against or involving the Developer, which questions or challenges the validity of this Agreement or any action taken or to be taken by the Developer pursuant to this Agreement or in connection with the transaction contemplated by this Agreement and the Developer knows of no valid basis for any such action, proceeding or investigation.

e. The above representations and warranties shall be deemed repeated at Closing and it shall be a condition to the Secretary's obligation to close under this Agreement that such representations and warranties are true and complete in all material respects.

11. Conditions Precedent to Conveyance of the Land. In addition to satisfaction of the conditions set forth elsewhere in this Agreement, the Secretary shall not be obligated to convey

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any of the Land to the Developer unless the following conditions have been satisfied as of the date of conveyance:

- a. The Developer has complied with its obligations under and there is no uncured default, which exists with respect to this Agreement, any other agreements between the Developer and the Secretary, any construction and/or permanent loan financing relating to the Project and all other documents executed by the Developer in connection with the Project.
- b. The Secretary has received evidence reasonably acceptable to the Secretary that the Developer has sufficient financing (debt and equity) to complete the Improvements, if any, which would remain to be completed after the deed conveyance of the applicable Parcel by the Secretary.
- c. The Secretary has complied with Section 9620, Title 42 United States Code and other legal and policy requirements.

[Add additional conditions based on specifics of Selected Proposal here.]

12. Conditions Precedent to Acceptance of the Land. The Developer shall not be obligated to accept conveyance of the Land from the Secretary unless the Secretary has complied with its obligations under the Building and/or Ground Lease, this Agreement, any other agreements between the Developer and the Secretary.

13. Closing Requirements.

- a. At Closing, the Secretary shall do the following:
 - (1) Execute and deliver a Quitclaim Deed with respect to the applicable Parcel.
 - (2) Execute and deliver a Termination and Release of Lease with respect to the applicable Parcel, if necessary.
 - (3) Execute, acknowledge and deliver, as appropriate, all additional documents which may be reasonably necessary to carry out the provisions of this Agreement and to permit the Secretary's conveyance to the Developer of the applicable Parcel.
- b. At Closing, the Developer shall do the following:
 - (1) Execute and deliver a Quitclaim Deed with respect to the applicable Parcel.
 - (2) Execute and deliver a Termination and Release of Lease with respect to the applicable Parcel.
 - (3) Assume all duties, from and after the Closing Date, with respect to the ownership, operation and maintenance of the applicable Parcel as provided in this Agreement.

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(4) Execute, acknowledge and deliver, as appropriate, all additional documents which may be reasonably necessary to carry out the provisions of this Agreement and to permit the Developer's acceptance of the applicable Parcel.

14. Closing Costs.

a. The Developer shall pay all costs incurred in connection with the Closing, including, but not limited to, its own attorney's fees, the cost of title examination, title commitment and title insurance, the cost of any environmental examination, any city, county and state transfer taxes, any sales tax for property conveyed, any income taxes, and all recordation fees. The Secretary shall pay its own attorney's fees.

b. From and after the conveyance of a Parcel, the Developer shall bear any and all costs associated with the ownership, operation and maintenance of such Parcel and/or Improvements, including without limitation, the payment to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time after such conveyance may be imposed on the Parcel and/or the Improvements.

15. Risk of Loss. From and after the conveyance of a Parcel, either by lease or in fee simple, (i) the Developer shall, in all circumstances and events and without prejudice to any other rights of the Secretary, bear all risk of loss or damage or destruction to such Parcel and related Improvements, including any building(s), improvements, fixtures or other property on such Parcel, arising from any causes whatsoever, with or without fault by the Secretary; and (ii) at a minimum, the Developer shall carry and maintain with respect to the Parcel and the related Improvements, at no expense to the Secretary, the insurance required pursuant to this Agreement. Neither the conveyance of any Parcel nor anything to contrary in this Agreement shall lessen, modify or otherwise affect the insurance requirements with respect to any portion of the Land which remains subject to the Building and/or Ground Lease.

16. Deposit.

a. The Developer shall deposit the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000) as an earnest money deposit (the "Deposit") with _____ ("Title Company"), located at _____, in immediately available funds to the Title Company upon Developer's execution of this Agreement. Title Company shall deliver to the Air Force and the Developer a receipt for the Deposit.

b. Developer shall deliver a fully executed copy of this Agreement to Title Company, which shall constitute an irrevocable joint instruction to Title Company, which may be modified only by the joint written consent of the Parties. The Parties shall, upon execution of this Agreement, deliver to Title Company confirming instructions regarding the deposit in the form set forth in Exhibit J.

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c. Title Company shall place the Deposit in an interest-bearing account controlled by the Title Company with a major independent financial institution and drawing interest at a commercially available rate for immediately-withdrawable funds as the Air Force shall reasonably approve. All such accrued interest shall be credited toward the consideration at Closing and in the event the deposit is retained by the Air Force, the entire account shall include any and all accrued interest. Upon successful completion of the Project, the circumstance upon which the Deposit will be returned to the Developer, developer shall likewise receive any and all accrued interest.

17.Design/Construction Agent. The Air Force will monitor the site development work and all construction of the SAMS complex and associated improvements; approve the payment of construction draws; and confirm acceptance of the SAMS Complex upon completion. Prior to commencement of site development and construction of the SAMS Complex, the Resident Architect shall confirm in writing that the plans and specifications provide for the construction of the SAMS Complex in conformance with the requirements of the Design/Build Contract and that the SAMS Complex can be constructed as set forth in the Design/Build Contract.

18. Developer's Default.

a. The following shall constitute defaults under this Agreement by the Developer:

(1) The Developer defaults in the performance of its obligations under this Agreement, or the Building and/or Ground Lease, and such default remains uncured following expiration of any applicable notice and cure period. If no cure period is otherwise provided, the Developer shall have thirty (30) days after delivery of written notice of default by the Secretary to the Developer. If, however, in the reasonable opinion of the Secretary, the time required to return to compliance exceeds the thirty (30) day period, the Developer shall not be deemed to be in default if within such thirty (30) day period the Developer shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Secretary.

(2) The Developer breaches any representation or warranty of the Developer contained this Agreement or the Building and/or Ground Lease and such breach has a material adverse impact on the Secretary.

b. Upon the occurrence of any default by the Developer, the Secretary may terminate this Agreement, without any cost or liability to the Secretary; provided, however, that the Secretary shall provide the Developer with at least sixty (60) days prior written notice of any such termination. In addition, the Secretary shall also be entitled to pursue any and all remedies available at law and/or in equity, including without limitation any and all remedies provided under this Agreement, and the Building and/or Ground Lease.

c. Reversion of Title to Secretary Subsequent to Conveyance.

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(1) IT IS THE INTENT OF THE PARTIES THAT THE CONVEYANCE OF THE LAND TO THE DEVELOPER SHALL BE MADE UPON, AND THAT THE QUITCLAIM DEED SHALL CONTAIN A CONDITION SUBSEQUENT TO THE EFFECT THAT IN THE EVENT OF ANY DEFAULT, FAILURE, VIOLATION, OR OTHER ACTION OR INACTION BY THE DEVELOPER AS SPECIFIED IN THIS AGREEMENT, WHICH IS NOT REMEDIED BY THE DEVELOPER (OR ANOTHER PARTY ON BEHALF OF THE DEVELOPER) TO THE SATISFACTION OF THE SECRETARY WITHIN THE PERIOD AND IN THE MANNER STATED IN THIS AGREEMENT, THE SECRETARY AT ITS OPTION MAY DECLARE A TERMINATION IN FAVOR OF THE SECRETARY OF THE TITLE, AND OF ALL THE RIGHTS AND INTERESTS IN AND TO THE LAND CONVEYED BY THE QUITCLAIM DEED TO THE DEVELOPER AND THAT SUCH TITLE AND ALL RIGHTS AND INTERESTS OF THE DEVELOPER, AND ANY ASSIGNS OR SUCCESSORS IN INTEREST TO AND IN THE LAND, SHALL REVERT TO THE SECRETARY.

(2) In the event of any reversion of title to the Land in the Secretary pursuant to the provisions of this Agreement, the restrictive covenants and quitclaim deed shall include title to any and all improvements, which exist or have been constructed and/or are in the process of being constructed on the Land as of the date of such reversion.

(3) Within 15 days of written notice from the Secretary of such reversion of title, the Developer shall provide the Secretary with a deed to the Land or such portion of the Land which has reverted in the Secretary and any and all improvements located on the Land and shall execute and deliver all documents, provide all information and take or forbear from taking such action as may be reasonably necessary or appropriate to achieve the reversion of title. The Developer hereby irrevocably appoints the Secretary as the Developer's attorney-in-fact to execute and record on its behalf such deed and to execute such other documents and instruments on behalf of the Developer as the Secretary, in its sole judgment, shall deem necessary or desirable for the purposes of effectuating the reversion of title and such power shall be coupled with an interest and irrevocable; provided that such power shall be exercisable only if the Developer fails to deliver the required deed and other documents within 15 days of written notice from the Secretary.

d. Retention of, or Resale of Reacquired Land and Improvements; Disposition of Proceeds.

(1) Upon the reversion of title to any or all of the Land to the Secretary, the Secretary, in its sole discretion and at its sole option, shall have the right to retain title and ownership of any Land so reacquired, or shall have the right, but not the obligation, to use good faith efforts to resell any or all of the Land and the Improvements in such manner as the Secretary shall deem appropriate; provided, however, if any Land and the Improvements in which title has reverted in the Secretary are subject to a mortgage which has been approved by the Secretary in accordance with this Agreement or the Building and/or Ground Lease, and the

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Secretary makes a decision to sell or lease the Land and Improvements, selection of the Developer, lessee or other transferee shall be subject to the consent of the holder of such approved mortgage, which consent shall not be unreasonably withheld.

(2) Upon any such resale or lease of the Land and Improvements, the proceeds of such shall be applied in the following order of priority:

(a) First, to reimburse the Secretary on its own behalf for all costs and expenses incurred by the Secretary, in connection with the recapture, management and resale of the Land and the Improvements; all taxes, assessments, and water and sewer charges with respect to the Land; any payments made or necessary to be made to discharge any encumbrances or liens (including the lien of any mortgage approved by the Secretary) existing on the Land at the time of revesting of title in the Secretary or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements on the Land; any amounts otherwise owing the Secretary by the Developer, its successors or transferees.

(b) Second, to reimburse the holder of any approved mortgage for sums advanced to the Developer under its mortgage pursuant including all sums advanced and outstanding interest thereon and to reimburse any applicable expenses connected with this Agreement, but only in those cases where the Land is sold free and clear of the lien of such approved mortgages.

(c) Third, the balance remaining, if any, to the Developer.

19. Secretary's Default.

a. The following shall constitute default under this Agreement by the Secretary:

(1) The Secretary defaults in the performance of its obligations under this Agreement, or the Building and/or Ground Lease, and such default remains uncured following expiration of any applicable notice and cure period.

(2) The Secretary breaches any representation of the Secretary contained in this Agreement, or the Building and/or Ground Lease and such breach has a material adverse impact on the Developer.

b. In the event of the AF's default hereunder for any reason, the Developer shall deliver written notice thereof to the Secretary or the designated authorized representative. If the AF does not cure such default within thirty (30) business days after receiving written notice thereof, the Developer shall be entitled to pursue all rights or remedies allowed to it at law or in equity, which remedies may be exercised cumulatively or separately, at the sole discretion of the

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Developer. If, however, in the reasonable opinion of the Developer, the time required to return to compliance exceeds the thirty (30) day period, the Secretary shall not be deemed to be in default if within thirty (30) day period the Secretary shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Developer.

20. Termination. The termination of this Agreement shall not relieve any party of its obligation to perform any obligations which arose prior to the date of such termination, or which relate to events which occurred prior to such termination, including without limitation, the payment of any amounts due or the delivery of any documentation.

21. Notices. Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Developer or the Secretary, shall be sufficiently given and shall be deemed given on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below. The Developer and the Secretary may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Developer:

The Secretary:

with a copy to:

22. General Provisions.

a. **Successors Bound.** The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns, provided that the Developer shall be prohibited from assigning all or any part of its right, title and interest under this Agreement without the written prior consent of the Secretary.

b. **Time; Performance of Obligations.** With respect to all obligations of the Developer or the Secretary under this Agreement, time is of the essence. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day. Each party hereby covenants to keep and perform faithfully all of its covenants and undertakings contained in this Agreement.

c. **Brokers.** The Secretary and the Developer each represent and warrant to the other that no real estate agent, broker, finder or intermediary of any kind was involved in negotiating the transaction contemplated in this Agreement.

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d. **Identification of Government Agencies, Statutes, Programs and Forms.** Any reference in this Agreement, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

e. **Titles and Captions.** All section or subsection titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Agreement.

f. **Pronouns and Plurals.** Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

g. **Further Action.** The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

h. **Applicable Law.** This Agreement, and any associated Building and/or Ground Lease, shall be construed, and the rights and obligations of the Secretary, and the Developer under this Agreement shall be determined, in accordance with federal law. However, questions regarding title to the Land conveyed hereunder shall be construed in accordance with the laws of the State of California.

i. **Integration.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements and understandings pertaining to this subject matter. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions of this Agreement. Any and all prior agreements, understandings or representations, including but not limited to the Business Points Memorandum (BPM), are hereby terminated and canceled in their entirety and are of no force and effect.

j. **Approvals.** Any approval or consent of the parties required for any matter under this Agreement shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Agreement.

k. **Exhibits.** All Exhibits to this Agreement are incorporated in this Agreement by reference.

l. **Conflicts.** The terms of this Agreement and the Building and/or Ground Lease are intended to be consistent and should be so construed. However, in the event of any ambiguity or inconsistency between the Building and/or Ground Lease, and this Agreement, this Agreement shall be controlling.

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m. **Survival.** The obligations of the parties shall survive Closing and the delivery of a Quitclaim Deed with respect to any or all of the Land.

n. **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement of the Secretary contained herein shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Secretary to the full extent permitted by law.

o. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original. This Agreement shall be binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

p. **Delay or Omission Not Waiver; Remedies Not Exclusive.** No delay or omission of a Party to exercise any right or remedy provided under this Agreement upon a default of the other party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of or acquiescence in any such default. Every right and remedy given by this Agreement or by law to a Party may be exercised from time to time, and as often as may be deemed expedient by such Party. No remedy conferred in this Agreement or reserved to the Secretary is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

q. **No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement. Specifically, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Developer.

r. **Amendment.** This Agreement shall be amended only by an instrument in writing executed by duly authorized representatives of the Parties.

s. **No Individual Liability.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Secretary, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Agreement, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

t. Disputes

1) The parties agree to use their best efforts to resolve any disputes that may arise without litigation, whether such dispute arises under or relates to the Agreement, including the construction provisions for the SAMS complex, or any lease entered into by the parties. If

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unassisted negotiations are unsuccessful, the parties will use Alternate Disputes Resolution (ADR) techniques in an attempt to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute. If the ADR is not successful, the parties retain all their existing rights. In cases where the parties decide to use ADR, the parties will prepare and agree to a specific, written ADR agreement appropriate to the controversy before the ADR process begins. If either party rejects ADR, they shall provide a written explanation to the other party providing specific reasons for the rejection.

2) Unless specified differently in any related agreement, disputes that cannot be resolved using the ADR procedures of paragraph 1) be resolved as follows:

- a) Any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the _____ (appointed representative of the Department of the Air Force) who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Developer. The decision of the _____ (appointed representative of the Department of the Air Force) shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Developer mails or otherwise furnishes to the _____ (SAF/MII Real Estate Directorate) a written appeal. The decision of the _____ (Air Force Material Command or authorized representative) for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by this substantial evidence. In connection with any appeal proceeding under this clause, the Developer shall proceed diligently with the performance of this Agreement and in accordance with the decision of the _____ (appointed representative of the Department of the Air Force).
- b) This “Disputes” clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph a) above. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.
- c) Judicial Review. Either Party, after exhausting the administrative remedies specified in paragraph a) above, may pursue any remedy available to it under the law.

u. **Federal, State, and Local Taxes.** The Agreement price includes all applicable Federal, State, and local taxes and duties. No adjustment shall be made in the Agreement price under this

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clause. However, the Air Force shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Agreement requests such evidence and a reasonable basis exists to sustain the exemption.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Secretary and the Developer as of Effective Date.

[NAME OF DEVELOPER]

By: _____

Name: _____

Title: _____

THE SECRETARY OF THE AIR FORCE

By: _____

Name: _____

Title: _____

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APPENDIX E-2, EXHIBIT B

**TERMS & CONDITIONS APPLICABLE TO THE SAMS
CONSTRUCTION**

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1.0 STATUTORY REQUIREMENTS FOR GOVERNMENT TRANSACTIONS

Government transactions are subject to statutes in addition to those applicable to non-government ventures. Therefore, compliance with the following statutes is required:

A. STATUTE TITLE

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18 USC 874 & 40 USC 276c Copeland Act
 41 USC 423 Procurement Integrity
 31 USC 1352 Payments to Influence Certain Transactions
 40 USC 327 et seq. Contract Work Hour and Safety Requirements Act
 40 USC 276a et seq. Davis Bacon Act
 41 USC 10b Buy American Act – Construction
 41 USC 601 et seq. Contract Disputes Act
 10 USC 2692 Storage and Disposal of Toxic and Hazardous Material

B. APPLICABLE CLAUSES:

1. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may --

- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (2) Rescind the contract with respect to which --

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either --

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor, or someone acting for the Contractor, has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

2. Limitation on Payments to Influence Certain Federal Transactions

(a) *Definitions.*

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"Agency," as used in this clause, means executive agency.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and *"tribal organization,"* as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

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(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action --

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of --

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal

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action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

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(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes --

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the subcontractor submits the disclosure form. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31

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U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

3. Contract Work Hours and Safety Standards Act

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.*

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records

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maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts*. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

4. Davis-Bacon Act

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

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(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The

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Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

5. Buy American Act - Balance of Payments Program Construction Materials

(a) *Definitions.* As used in this clause--

"Component" means any article, material, or supply incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

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"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: NONE.

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Construction material description	Unit of measure	Quantity	Price (dollars)
Item 1			
Foreign construction material			
Domestic construction material			

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Item 2 etc.			
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[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information. Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

6. Disputes

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "*Claim*," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (c)(1) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractor shall provide the certification specified in paragraph (c)(1)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

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(d) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(f) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(g) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or

(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

2.0 PROVISIONS

In addition to the statutes described above, the following terms and conditions apply to this contract:

A. PERMITS AND RESPONSIBILITIES

(a) The Developer shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work.

(b) The Developer shall also be responsible for all damages to persons or property that occur as a result of the Developer's fault or negligence. The Developer shall also be responsible for all materials delivered and work performed until completion and

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acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

(c) Neither the Government's review, approval or acceptance of, nor payment for the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Developer shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Developer's negligent performance of any of the services furnished under this contract.

(d) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(e) If the Developer is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

B. CONSTRUCTION AND WARRANTY BONDING

Construction bonding is required. No construction shall begin until the Developer has provided the Government with a performance and payment bond issued by a corporate surety satisfactory to the Government in all respects. The performance and payment bond must run to the Government and the financial institution, which has issued a commitment to the business arrangement for a construction loan to finance the cost of construction of the project. The commitment must require that the performance and payment bond be delivered to the lender before it will make any advances. The loan with the lender must actually close in accordance with its commitment. Such performance and payment bonds must be acceptable to the lender, be in the amount of the entire cost of construction of the project as the cost of construction is stipulated in the construction contract between the Developer and its general contractor, and guarantee the performance of the contract for the construction of the project in accordance with the approved final development plans and specifications for the project.

Payment & Performance Bonds. The penal sum of such bonds will be as follows:

(a) Performance Bonds. The penal amount of performance bonds shall be 100% of the original construction price, unless the Government Representative determines that a lesser amount would be adequate for the protection of the Government.

(b) Payment Bonds. The penal amount of payment bonds shall equal: (1) Fifty percent (50%) of the contract price if the contract price is not more than \$1 million; (2) Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million; or (3) \$2.5 million if the contract price is more than \$5 million.

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Warranty Bond: Warranty bonding is required. Developers shall be required to warrant that the construction and other work performed under the Business Arrangements conforms to the requirements of the final development plans and specifications for the project and is free of any defect in equipment, material, design or workmanship performed by the Developer or any subcontractor at any tier. The warranty shall continue for a period of one year from the date of the final acceptance of the work. Performance of the warranty shall be secured by a corporate surety acceptable to the Government or by insurance in an amount not less than two million dollars (\$2,000,000) and in such form as is acceptable to the Government in all respects. The Developer shall be required to begin work to remedy any defect in equipment, material, design, or workmanship within fifteen (15) days after receiving written notice of the defect from the Government. If the Developer fails to remedy the defect within a reasonable time after its receipt of notice, the Government will have the right to require the corporate surety or insurer to replace, repair, or otherwise remedy the defect at no expense to the Government. The warranty shall not limit the Government's rights under the Business Arrangements with respect to latent defects, gross mistakes, or fraud.

C. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) The Developer acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) conformation and conditions of the ground; and
- (5) character of equipment and facilities needed preliminary to and during work performance.

The Developer also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable during a due diligence inspection of the site. Any failure of the Developer to take the actions described and acknowledged in this paragraph will not relieve the Developer from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

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(b) The Government assumes no responsibility for any conclusions or interpretations made by the Developer. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions, which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

D. WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of --

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall --

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

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- (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.
- (j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

E. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

- (a) The Developer shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Developer shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, by the careless operation of equipment, or by workmen, the Developer shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (b) The Developer shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Developer.

The Developer shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Developer fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Developer.

F. OPERATIONS AND STORAGE AREAS

- (a) The Developer shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Developer shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- (b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Developer only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Developer without expense to the Government. The temporary buildings and utilities shall remain the property of the

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Developer and shall be removed by the Developer at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Developer shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Developer when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Developer shall protect them from damage. The Developer shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

G. USE AND POSSESSION PRIOR TO COMPLETION

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Developer a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Developer of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Developer shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use. If prior possession or use by the Government delays the progress of the work or causes additional expense to the Developer, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

H. CLEANING UP

The Developer shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Developer shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Developer shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

I. ACCIDENT PREVENTION

(a) The Developer shall provide and maintain work environments and procedures which will --

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- (1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Developer operations and activities;
 - (2) Avoid interruptions of Government operations and delays in project completion dates; and
 - (3) Control costs in the performance of this contract.
- (b) For these purposes, the Developer shall –
- (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.
- (c) The Developer shall comply with all pertinent provisions of the latest version of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- (d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Developer orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Developer or the Developer's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Developer shall immediately take corrective action. If the Developer fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Developer shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (e) The Developer shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

J. OTHER CONTRACTS

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Developer shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Developer

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shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

K. MATERIAL AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Developer may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Developer shall obtain the Contracting Officer's approval of the machinery, mechanical, and other equipment to be incorporated into the work. When requesting approval, the Developer shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery, mechanical, and other equipment. When required by this contract or by the Contracting Officer, the Developer shall also obtain the Contracting Officer's approval of the material or articles which the Developer contemplates incorporating into the work. When requesting approval, the Developer shall provide full information concerning the material or articles. When directed to do so, the Developer shall submit samples for approval at the Developer's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Developer remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(d) At all times during performance of this contract and until the work is completed and accepted, the Developer shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Developer.

L. AVAILABILITY AND USE OF UTILITY SERVICES

(a) The Government shall make all reasonably required amounts of utilities available to the Developer from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Developer at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Developer shall carefully conserve any utilities furnished without charge.

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(b) The Developer, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Developer shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

M. SCHEDULES FOR CONSTRUCTION CONTRACTS

(a) The Developer shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Developer proposes to perform the work, and the dates on which the Developer contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.

(b) The Developer shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Developer falls behind the approved schedule, the Developer shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Developer to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Developer to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Developer is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Developer's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

N. ORGANIZATION AND DIRECTION OF THE WORK

(a) When this contract is executed, the Developer shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Developer shall keep the data furnished current by supplementing it as additional information becomes available.

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(b) Work performance under this contract shall be under the full-time resident direction of:

- (1) the Developer, if the Developer is an individual;
- (2) one or more principal partners, if the Developer is a partnership; or
- (3) one or more senior officers, if Developer is a corporation, association, or similar legal entity.

However, if the Contracting Officer approves, a specific person may represent the Developer in the direction of the work or persons holding positions other than those identified in this paragraph.

O. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

The Developer shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto.

P. INSURANCE -- WORK ON A GOVERNMENT INSTALLATION

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance listed below:

(1) *Workers' compensation and employer's liability.* Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(2) *General liability.*

(i) The contracting officer shall require bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(ii) Property damage liability insurance shall be required only in special circumstances as determined by the agency.

(3) *Automobile liability.* The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person

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and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective --

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

Q. BANKRUPTCY

(a) Waiver of Automatic or Supplemental Stay: In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the "Bankruptcy Code") by or against the Developer (other than an involuntary petition filed by or joined in by the Government), the Developer shall not assert, or request any other party to assert, that the automatic stay under Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of the Government to enforce any rights it has by virtue of the agreements entered between the Government and the Developer or any other rights that the Government has, whether now or hereafter acquired, against any party responsible for the debts or obligations of the Developer under these Business Arrangements. Furthermore, the Developer shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of the Government to enforce any rights it has by virtue of these Business Arrangements against any party responsible for the debts or obligations of the Developer under these Business Arrangements. The waivers contained in this paragraph are a material inducement to the Government's willingness to enter into these Business Arrangements and the Developer acknowledges and agrees that no grounds exist for equitable relief which will bar, delay, or impede the exercise by the Government of the Government's rights and remedies against the Developer or any party responsible for the debts or obligations of the Developer under these Business Arrangements.

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(b) **Bankruptcy Acknowledgment:** If any or all the Premises or any interest in the Premises becomes the property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then the Government shall immediately become entitled, in addition to all other relief to which the Government may be entitled under these Business Arrangements, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so to permit the Government to pursue its rights and remedies of the Government at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting the Developer's use of all "cash collateral" as defined under Section 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, the Developer shall not contend or allege in any pleading or petition filed in any court proceeding that the Government does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Developer to stay, condition, or inhibit the Government from exercising its remedies are hereby admitted by the Developer to be in bad faith and the Developer further admits that the Government will have just cause for relief from the automatic stay in order to take such actions authorized under state law.

R. INSPECTION OF CONSTRUCTION

(a) *Definition.* "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Developer shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Developer shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not --

- (1) Relieve the Developer of responsibility for providing adequate quality control measures;
- (2) Relieve the Developer of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Developer from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

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(e) The Developer shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Developer any additional cost of inspection or test when work is not ready at the time specified by the Developer for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Developer shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Developer shall promptly segregate and remove rejected material from the premises.

(g) If the Developer does not promptly replace or correct rejected work, the Government may --

(1) By contract or otherwise, replace or correct the work and charge the cost to the Developer; or

(2) Terminate for default the Developer's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Developer, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Developer or its subcontractors, the Developer shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

S. Payrolls and Basic Records

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours

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worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the --

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

T. Apprentices and Trainees

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance

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with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

U. Government Supply Sources

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property."

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V. Ordering From Government Supply Sources

(a) When placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules, the Contractor shall follow the terms of the applicable schedule and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor).

(2) The following statement:

This order is placed under written authorization from
_____ dated _____.

In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406, with a copy to the authorizing office.

(c) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(d) When placing orders for Government stock, the Contractor shall-

(1) Comply with the requirements of the Contracting Officer's authorization,;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts;
and

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice. For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result

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in the DoD supply source refusing to honor the requisition or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

W. Default

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if --

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include --

(i) Acts of God or of the public enemy,

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- (ii) Acts of the Government in either its sovereign or contractual capacity,
 - (iii) Acts of another Contractor in the performance of a contract with the Government,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.
- (d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

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Appendix E-2, Exhibit E
REAL ESTATE BUILDING LEASE
At Los Angeles Air Force Base

This Building Lease (the “Lease”), made this _____ day of _____, 2001, by and between the United States of America, acting by and through the United States Air Force (the “Air Force”), and _____ (as the “Lessor”), collectively known at times as the “Parties.”

WITNESSETH

WHEREAS, the Air Force, under the authority contained in 2001 Defense Authorization Act, 106 Pub. Law 398, 114 Stat. 1654, Title XXVIII, Subtitle D, Section 2861, “Land Conveyance, Los Angeles Air Force Base”, and the Lessor have executed a Purchase, Sale and Development Agreement (the “Agreement”), in which the Lessor agrees to design and construct certain new government office space and related improvements known as the Systems Acquisition Management Complex (the “Project”); and

WHEREAS, concurrently with the execution of the Agreement the Air Force enters into this Lease for the purpose of providing sufficient real estate interests to the Lessor in order to carry out the requirements of the Project;

NOW, THEREFORE, for the consideration set forth below and subject to the terms, conditions, covenants and agreements set forth in this Lease, the Parties agree as follows:

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1. LEASE OF BUILDING

- 1.1 The Lessor leases exclusively, subject to Section 17 hereof, to the Air Force all new facilities and improvements which constitute the Project (the "Leased Premises"). The leasehold is subject to all servitudes, licenses, easements, and appurtenances, of record or not, belonging to the leased premises. Title to the Project shall belong to the Lessor subject to the terms of this Lease and shall vest in the Air Force on the Term Expiration Date, as defined below in Section 2.1.

2. TERM AND DELIVERY OF POSSESSION

- 2.1 This Lease shall be for a term of _____ years. The term shall begin on _____ (the "Term Beginning Date") and end on _____ (the "Term Expiration Date"), unless sooner terminated in accordance with the provisions of this Lease and/or the Agreement.

3. EASEMENTS AND RIGHTS-OF-WAY

- 3.1 The Leased Premises are subject to all existing easements and rights-of-way (the "Existing Encumbrances"). The Lessor shall have the further right to create and grant additional easements and rights-of-way over, across and through the Leased Premises for the benefit of the Project, including, without limitation, the right to modify and relocate any of the Existing Encumbrances ("Additional Encumbrances"), subject to Air Force approval, with such approval not to be unreasonably withheld. The Air Force shall accept and perform its operations on the Leased Premises subject to and in compliance with the Existing Encumbrances and Additional Encumbrances (collectively, the "Encumbrances"); provided, however, the Lessor agrees that Additional Encumbrances shall not be inconsistent with or materially impair the rights of the Air Force under the Lease or under the Agreement with respect to the construction, ownership and operation of the Project. The Lessor agrees to coordinate the grant or creation of any of the Additional Encumbrances and the modification or relocation of any of the Existing Encumbrances with Air Force so as to provide for and protect the mutual needs of the Air Force and Lessor.
- 3.2 The Air Force agrees, at the request of the Lessor, to grant and create such additional easements and rights-of-way as shall be reasonably required to enable the Lessor to develop and own the Project including, consistent with the accomplishment of the Air Force's needs, rights of ingress, egress and access and utility service for the Project, which easements and rights-of-way shall be set forth in documentation prepared by the Lessor. Any easements and rights-of-way over property that is not owned by the Lessor shall be the responsibility of the Lessor to obtain or procure at the Lessor's sole cost and expense as part of the Project.

4. CONSIDERATION

- 4.1 The Air Force shall pay to the Lessor cash in the amount of \$_____ for the entire lease term, payable in the amount of \$_____ per annum, with such payment due

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on_____.

5. AGREEMENT

- 5.1 The Agreement sets forth detailed procedures and requirements to be followed by the Lessor in the design and construction of the Project. Any amendments to the Agreement that impact the Lease shall be specifically incorporated into the Lease.
- 5.2 In the event of any conflict or inconsistency between any provisions of the Agreement and any provisions of this Lease, the provisions of the Agreement shall control. In the event of any future amendment to the Lease, such amendment shall conform to the terms of the Agreement.

6. USE OF LEASED PREMISES

- 6.1 The Leased Premises shall be used by the Air Force for the purposes of carrying out its mission or for any other purpose deemed appropriate by the Secretary of the Air Force.

7. DEFAULT

- 7.1 Any default or breach of this Lease shall be handled in accordance with the Disputes provision of this Lease.
- 7.2 The failure to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Lessor to the Air Force shall constitute a default and breach of this Lease by the Air Force. In the event, however, that the default is of such a nature that it cannot be cured within said thirty (30) days, the Air Force shall not be deemed to be in default and breach of this Lease if the Air Force shall begin the actions necessary to cure the default in accordance with a compliance schedule approved agreed to between the Air Force, and Lessor and the Air Force diligently continues to comply with said compliance schedule in a manner satisfactory to the Air Force.
- 7.3 No default or breach shall be deemed to have occurred for any period of time during which the Parties are attempting in good faith to resolve a dispute, pursuant to the procedures provided for in Section 16 of the lease or Section 22t of the Agreement in relation to the actions, inactions or omissions which are the subject of the alleged default or breach. If pursuant to dispute resolution, the default or breach is determined to have occurred, the period for cure shall not begin until the day after the final decision on the dispute is issued.

8. TAXES

- 8.1 The Lessor shall be responsible for the payment of all taxes, assessments and similar charges on the Leased Premises as the same become due and payable.

9. OPERATION AND MAINTENANCE OF LEASED PREMISES

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- 9.1 The Air Force shall operate and maintain the Leased Premises as detailed in this Lease and as further set out in the Agreement.
- 9.2 The Lessor shall pay or cause to be paid, the bills and obligations of the Project, including taxes as described in Section 8 above, as they come due on the normal course of business, so as to keep the Project solvent and free from liens, other than those expressly permitted by the Air Force, by this lease or by the Agreement.
- 9.3 Any real or personal property of the Air Force damaged or destroyed by the Lessor incident to the Lessor's activities on the Leased Premises shall be promptly repaired or replaced by the Lessor to the reasonable satisfaction of the Air Force. In lieu of such repair or replacement, the Lessor shall, if so requested by the Air Force, pay to the Air Force money in an amount sufficient to compensate for the actual costs incurred by the Air Force by reason of damage or destruction of Air Force property, including natural resources.

10. COMPLIANCE WITH APPLICABLE LAWS

- 10.1 The Lessor shall at all times during the term of this Lease faithfully observe and comply with, at its sole cost and expense, the provisions of all Federal, State and local laws, rules, regulations, orders, ordinances, and other Air Force standards and requirements which may be applicable to the Leased Premises, particularly those provisions concerning the protection of the environment and pollution control and abatement and occupational safety and health, whether such provisions are now in force or may, at any time in the future, be enacted or directed and, by law, become applicable to and enforceable against the Leased Premises.

11. RISK OF LOSS

- 11.1 The Air Force agrees to assume all risks of loss for damage to property and injury or death to persons by reason of or incident to the possession and/or use of the Leased Premises or the activities conducted by the Air Force under this Lease; provided, however, that any loss, damage or destruction or injury or death caused by the acts of the Lessor shall be the responsibility of the Lessor.

12. UTILITIES AND SERVICES

- 12.1 The Air Force will be responsible for utilities and services as described in Exhibit B of the Agreement.

13. NOTICES

- 13.1 Whenever the Air Force or the Lessor shall desire to give or serve upon the other any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Lease or with respect to the Leased Premises,

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each such notice, demand, order, or direction shall be in writing. All notices delivered by facsimile shall be subsequently confirmed by sending a copy by overnight courier or by U.S. certified mail no later than the next following day, addressed as follows or at such other address or addresses as the Air Force or the Lessor may designate by notice given by certified mail:

If to the Lessor: _____

If to the Air Force: _____

14. LIENS AND MORTGAGES

- 14.1 Any lien or mortgage shall be in accordance with the Agreement.
- 14.2 During the term of this Lease, the Lessor may encumber its interest in the Leased Premises by way of one or more loans secured by a mortgage or deed of trust subject to Section 14.3 below. The proposed holder of any mortgage must be approved by the Air Force prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed provided, however, that the Air Force shall approve any mortgagee that is a bank, institutional lender or investor, insurance company or other lender providing financing from or through the use of customary capital or lending markets for similar office projects. Any loan may be further secured by a conditional assignment of this Lease to the mortgagee. The Air Force agrees to execute a consent to the conditional assignment of this Lease for financing purposes in form reasonably acceptable to any approved mortgagee and from time to time to execute an Estoppel Certificate and any other similar documentation as required by the approved mortgagee to certify as to the status of this Lease and to the performance of the Lessor hereunder as of the date of such certification.
- 14.3 No mortgage or deed of trust shall extend to or affect the fee, the remainder interest or the estate of the Air Force in the Leased Premises, but may extend to or affect the leasehold interest of the Lessor in the Leased Premises and the ownership if any, by the Lessor of the Project. No mortgage or deed-of-trust shall be binding upon the Air Force in the enforcement of its rights and remedies under the Lease and by law provided, unless, and until a copy thereof shall have been delivered to the Air Force and such mortgage or deed of trust is authorized in accordance with the provisions of this Section 21.

15. TITLE TO NEWLY CONSTRUCTED IMPROVEMENTS

- 15.1 Upon the expiration of the lease, title will vest in the Air Force.

16. DISPUTES

- 16.1 Before or in conjunction with pursuing any remedy which is available to it under law, by

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mutual agreement, the parties may submit the dispute to an alternative dispute resolution procedure authorized by the Administrative Dispute Resolution Act of 1966, P.L. No. 104-320 (5 U.S.C. §§571, et.seq.)

- 16.2 Except as otherwise provided in this Lease, any dispute between the Air Force and the Lessor arising under this Lease shall be resolved in accordance with the purpose and intent of the Agreement, and in accordance with the Disputes Clause in Exhibit B, of the Agreement, incorporated herein by reference.

17. AMENDMENTS

- 17.1 This Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of the respective Parties, so long as such amendment is in conformance with and/or does not conflict with any terms of the Agreement.

18. INSURANCE

- 18.1 The Lessee shall obtain comprehensive general liability insurance on an "occurrence basis" (provided such coverage is reasonably obtainable) against claims for "personal injury," including without limitation, bodily injury, death or property damage, occurring upon, in or about the building, such insurance to afford immediate minimum protection at the time of the Term Beginning Date, and at all times during the term of this Lease, with limits of liability in amounts approved from time to time by the Air Force, but not less than \$_____ in the event of bodily injury and death to any one or more persons in one accident, and not less than \$ _____ for property damage. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of any person or organization, or involving any owned, non-owned, leased or hired automotive equipment in connection with the Lessee's activities. The insurance carried and maintained by the Lessee pursuant to this Section shall name the Air Force as an additional insured, and provide coverage to protect the Air Force from any damage and liability for which the Lessee is liable or responsible or agrees to hold harmless and indemnify the Air Force under this Lease. Proceeds under all policies of insurance carried and maintained to provide the coverage required by this Section 18.1. shall be available only for that purpose.
- 18.2 If and to the extent required by law, Lessee shall maintain workers' compensation and employer's liability or similar insurance in form and amounts required by law.
- 18.3 All policies of insurance which this Lease requires the Lessee to carry and maintain or cause to be carried or maintained pursuant to this Section 18 shall be effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Lease, issued by insurers of recognized responsibility. All policies issued by the respective insurers for comprehensive general liability insurance and for the broad form of extended coverage insurance provided for above in this Section shall be for the mutual

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benefit of the Air Force and the Lessee and will name the Air Force as an additional insured. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Air Force or any other person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Air Force of written notice thereof; provide that the insurer shall have no right of subrogation against the Air Force; and be reasonably satisfactory to the Air Force in all respects. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) days' written notice to the Air Force. The Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Lessee under this Section 18 will constitute a failure to comply with the terms of the Lease, and the Air Force, shall have the right to terminate the Lease for default and breach upon receipt of any such cancellation notice, but only if the Lessee fails to cure such noncompliance.

- 18.4 The Lessee shall deliver or cause to be delivered upon execution of this Lease (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Section 18), at the Air Force's option, a certified copy of each policy of insurance required by the Lease as soon as each such policy is made available by the insurer, or a certificate of insurance evidencing the insurance required by the Lease, or both.

IN WITNESS WHEREOF, I have set my hand to this Lease this _____ day of _____.

By: _____

Title: _____

This Lease is executed by the Lessor this _____ day of _____.

By: _____

Title: _____

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Appendix E-2, Exhibit F
GROUND LEASE
At Los Angeles Air Force Base

This Ground Lease (the “Lease”), made this _____ day of _____, 2001, by and between the United States of America, acting by and through the United States Air Force (the “Air Force” or Lessor), and _____ (as the “Lessee”), collectively known at times as the “Parties.”

WITNESSETH

WHEREAS, the Air Force under the authority contained in 2001 Defense Authorization Act, 106 Pub. Law 398, 114 Stat. 1654, Title XXVIII, Subtitle D, Section 2861, “Land Conveyance, Los Angeles Air Force Base”, has determined that the leasing of the property identified in this Lease will be in the public interest; and

WHEREAS, concurrently with the execution of this Lease, the Lessee and the Air Force also have executed a Purchase, Sale, and Development Contract (the “Agreement”), in which the Lessee agrees to design and construct certain new government office space and related improvements known as the Systems Acquisition Management Complex project (the “Project”); and

WHEREAS, the Air Force enters into this Lease for the purpose of providing sufficient real estate interests to the Lessee in order to carry out the requirements of a unique public/private venture at Los Angeles Air Force Base (LAAFB) as described in the Request for Proposals for the SAMS complex (the “Solicitation”), and the proposal selected by the Air Force (the “Proposal”), including private commercialization of certain land and the construction of the Project; and

NOW, THEREFORE, for the consideration set forth below and subject to the terms, conditions, covenants and agreements set forth in this Lease, the Parties agree as follows:

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1. LEASE OF LAND AND INFRASTRUCTURE:

- 1.1 The Air Force leases exclusively, subject to Section 19 hereof to the Lessee certain land and all facilities and improvements thereon (the "Land"), as more particularly described in Exhibit A to this Lease and depicted upon the drawings attached as Exhibit B to this Lease. At the Term Expiration Date of the Land lease, title to the Land shall vest with the Air Force unless the Lessee, pursuant to the terms, conditions and procedures set forth in Section 20, exercises its option to acquire the Land, and provided further that the Lessee is not in default in regard to said Agreement.

2. TERM AND DELIVERY OF POSSESSION

- 2.1 This Lease shall be for a term of _____ years. The term shall begin on _____ (the "Term Beginning Date") and end on _____ (the "Term Expiration Date"), unless sooner terminated in accordance with the provisions of this Lease and/or the Agreement.

3. EASEMENTS AND RIGHTS-OF-WAY

- 3.1 The Land is subject to all existing easements and rights-of-way (the "Existing Encumbrances"). The Lessee shall have the further right to create and grant additional easements and rights-of-way over, across and through the Land, including, without limitation, the right to modify and relocate any of the Existing Encumbrances ("Additional Encumbrances"), **subject to Air Force approval**, with such approval not to be unreasonably withheld. The Air Force shall accept and perform its operations on the Land subject to and in compliance with the Existing Encumbrances and Additional Encumbrances (collectively, the "Encumbrances"); provided, however, the Lessee agrees that Additional Encumbrances shall not be inconsistent with or materially impair the rights of the Air Force under the Lease or under the Agreement with respect to the construction, ownership and operation of the Project. The Lessee agrees to coordinate the grant or creation of any of the Additional Encumbrances and the modification or relocation of any of the Existing Encumbrances with the Air Force so as to provide for and protect the mutual needs of the Air Force and Lessee.
- 3.2 The Air Force agrees, at the request of the Lessee, to grant and create such additional easements and rights-of-way as shall be reasonably required to enable the Lessee to develop the Land for its own commercial purposes, or to construct the Project including, consistent with the accomplishment of the Air Force's mission, rights of ingress, egress and access and utility service for the Project, which easements and rights-of-way shall be set forth in documentation prepared by the Lessee. Any easements and rights-of-way over property that is not owned by the Lessee shall be the responsibility of the Lessee to obtain or procure at the Lessee's sole cost and expense as part of the Project.

4. CONDITION OF THE LAND

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- 4.1 Subject to the provisions of this Lease, and delivery of a Physical Conditions Report (PCR) and an Environmental Baseline Survey (EBS) as hereinafter provided in Sections 4.2 and 4.3 hereof, the Lessee agrees and acknowledges that it has inspected, knows and accepts the condition and state of repair of the Land. It is understood and agreed that the Land is leased in an "as is" condition without any representation or warranty by the Air Force concerning their condition and without obligation on the part of the Air Force to make any alterations, repairs or additions. The Air Force shall not be liable for any latent or patent defects in the Land. The Lessee acknowledges that the Air Force has made no representation or warranty concerning the condition and state of repair of the Land nor any agreement or promise to alter, improve, adapt or repair them which has not been fully set forth in this Lease.
- 4.2 A PCR of the Land will be prepared by the Air Force and/or its representatives, signed by the respective representatives of the Parties, and attached hereto as Exhibit C within ten (10) days after the Term Beginning Date. The PCR shall set forth the agreed physical condition of the Land on the Term Beginning Date as determined from a joint inspection by the Parties. If the Parties cannot agree to a particular condition or matter reflected in the PCR, the Lessee may attach an addendum to the PCR explaining its disagreement with the Air Force's determination as to such condition and the reasons therefore. Disagreements will be resolved per Section 21 of this lease.
- 4.3 An EBS of the Land will be prepared by the Air Force and/or its representatives, signed by the respective representatives of the Parties, and attached hereto as Exhibit D. The EBS shall set forth those environmental conditions and matters on and affecting the Land on the Term Beginning Date, as determined from the records and analyses reflected therein. A second EBS of the Land will be prepared by the Lessee and/or its representatives, signed by the respective representatives of the Parties and attached as Exhibit D after expiration or earlier termination of the Lease. This second EBS will document the environmental conditions and matters on and affecting the Land on the ending date of the Lease as determined from the records and analyses reflected therein. If the Parties cannot agree to a particular condition or matter reflected in either EBS, the Lessee may attach an addendum to the EBS explaining its disagreement with the Air Force's determination as to such condition and the reasons therefore. Disagreements will be resolved per Section 21 of this lease.

5. CONSIDERATION

- 5.1 The consideration for this Lease is part of and non-severable from the consideration cited in the Agreement.

6. AGREEMENT

- 6.1 The Agreement sets forth detailed procedures and requirements to be followed by the Lessee in the design and construction of the Project. Any amendments to the Agreement that impact the Lease shall be specifically incorporated into the Lease.
- 6.2 In the event of any conflict or inconsistency between any provisions of the Agreement and

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any provisions of this Lease, the provisions of the Agreement shall control. In the event of any future amendment to the Lease, such amendment shall conform to the terms of the Agreement.

7. USE OF THE LAND

- 7.1 The Land shall be used for execution and construction of the Project, as specified in the Agreement, and such private development as the Lessee deems appropriate.
- 7.2 The National Historic Preservation Act, 16 U.S.C. 470a, and the Archaeological Resources Protection Act, 16 U.S.C. 470 et seq., impose certain obligations on the Air Force to preserve historic and/or archaeological properties. The Air Force represents that it has no knowledge of any such artifacts, relics, remains or objects on the Land. **Lessee shall not excavate and/or alter the Land without the approval of the Air Force.** If archaeological or historic materials are encountered, the Lessee shall stop work immediately and notify the Air Force.

8. DEFAULT AND TERMINATION

- 8.1 Any default or breach of this Lease will be cause for termination of the Agreement in accordance with its termination provisions. Lender will need notice of default and opportunity to cure default.
- 8.2 Any default or breach of the Agreement will be cause for termination of this Lease. Lender will need notice of default and opportunity to cure default.
- 8.3 The failure to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Air Force to the Lessee (with a copy to the Lender) shall constitute a default and breach of this Lease by the Lessee. In the event, however, that the default is of such a nature that it cannot be cured within said thirty (30) days, the Lessee shall not be deemed to be in default and breach of this Lease if the Lessee or the Lender within such period shall begin the actions necessary to cure the default in accordance with a compliance schedule approved by the Air Force, and Lessee or the Lender diligently continues to comply with said compliance schedule in a manner satisfactory to the Air Force.
- 8.4 No default or breach shall be deemed to have occurred for any period of time during which the Parties are attempting in good faith to resolve a dispute, pursuant to the procedures provided for in Section 21 of the lease or Section 22t of the Agreement in relation to the actions, inactions or omissions which are the subject of the alleged default or breach. If pursuant to dispute resolution, the default or breach is determined to have occurred, the Lessee's period for cure shall not begin until the day after the final decision on the dispute is issued.

9. TAXES

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- 9.1 The Lessee shall be responsible for the payment of all taxes, assessments and similar charges on the Land as the same become due and payable.

10. RESTORATION AND SURRENDER

- 10.1 Upon expiration of the Lease, or upon any termination of the Lease, the Lessee shall discontinue its operations on the Land and vacate the Land in accordance with the Agreement.

11. ENVIRONMENTAL PROTECTION

- 11.1 The Lessee shall comply with all Federal, State, and local laws, regulations and standards that are or may become applicable to Lessee's activities on the Land.
- 11.2 The Lessee shall be responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease independent of any existing permits issued to the Air Force.
- 11.3 The Lessee shall be responsible for, and indemnify, save, and hold harmless the Air Force from, any claims for damages or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Lessee, its officers, agents, employees, contractors, subcontractors or licensees, or the invitees of any of them, from and after the Term Beginning Date giving rise to Air Force civil or criminal liability or responsibility under Federal, State or local environmental laws. The Lessee shall remediate any such releases, discharges, emissions, spills, storage, handling, disposal, or any other act or omission by the Lessee to the satisfaction of the appropriate environmental regulatory agency. This Section shall survive the expiration or sooner termination of this Lease, and the Lessee's obligations hereunder shall apply whenever the Air Force incurs costs or liabilities of the types described in this Section 11.
- 11.4 The Air Force shall not be responsible for any handling, removal or containment of asbestos or asbestos containing material (collectively, the "ACM"), or any liability related to ACM; provided, however, that the Air Force shall be responsible for any claims or liability based upon or relating to the presence of ACM on or before the Term Beginning Date brought by third parties against the Air Force or Lessee and its successors, grantees and assigns. The Lessee shall be responsible for removal and disposal of all ACM in the improvements on the Land and shall incorporate an asbestos disposal plan into the plans for demolition of improvements submitted to the Air Force for approval. The asbestos disposal plan shall, among other things, identify the proposed disposal site for the asbestos. Removal and disposal of ACM must be carried out in strict compliance with all applicable Federal, State and local laws, rules, regulations, and standards.
- 11.5 The Lessee shall strictly comply with all applicable Federal, (including 10 U.S.C. § 2692),

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State, and local laws, ordinances, rules, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes, as it relates to the Land.

- 11.6 The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, as amended ("RCRA") or its State equivalent and any other applicable laws, ordinances, rules, and regulations, as it relates to the premises. The Lessee will not accomplish any treatment, storage or disposal of hazardous waste requiring a permit under RCRA unless the Lessee is in possession of a valid permit issued to it under RCRA. The Lessee shall not treat, store, or dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to the Air Force. The Lessee shall be liable for any violations of these requirements by any tenants, and shall be liable for the cost of proper disposal of any hazardous waste generated by any tenants in the event of failure by the tenants to dispose properly of such wastes.

11.6.1 The Lessee shall provide at its own expense such hazardous waste storage facilities relating to the Lessee's use or release of any toxic or hazardous waste, substance or materials, complying with all laws and regulations, as it may need for such storage. Air Force hazardous waste storage facilities will not be available to the Lessee without approval by the Air Force. Any storage of such materials must be in accordance with 10 U.S.C. § 2692 or other applicable laws and regulations.

11.6.2 Air Force accumulation points for hazardous and other wastes will not be used by the Lessee without approval of the Air Force. Neither will the Lessee permit its hazardous waste to be commingled with hazardous waste of the Air Force without approval of the Air Force.

11.6.3 Any violation of the requirements of this Section 11.6 shall constitute a material breach of this Lease.

- 11.7 The Air Force expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with respect to the execution of the Agreement may impact the Lessee's quiet use and enjoyment of the Land. The Lessee agrees that notwithstanding any other provision of this Lease, the Air Force assumes no liability except to the extent mandated by applicable laws, to the Lessee should implementation of the Agreement or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the U.S. Air Force or the Department of Defense, interfere with the Air Force's use of the Land. The Lessee shall have no claim against the Air Force or any officer, agent, employee or contractor thereof on account of any such interference, whether due to entry, performance or remedial or removal investigations, or exercise of any right with respect to the Agreement or under this Lease or otherwise, provided, however, that (a) the Lessee shall cooperate with the Air Force to eliminate or reduce, to the extent possible, any such interference with the Air Force's use of the Land; and (b) the Lessee shall be and remain responsible to the extent mandated by applicable laws for all personal injury or property damage caused by the Lessee as a result of the execution of the Agreement or

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- actions taken with respect thereto. Any monitoring wells, pumping wells and treatment facilities on the Land shall be designed and installed by the Lessee to be as inconspicuous as practicable. The Lessee shall repair any damage caused by its exercise of the above rights.
- 11.8 The Lessee agrees to comply with the provisions of any health or safety plan in effect in accordance with the execution of the Agreement, or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Air Force. The Lessee, assignees, licensees, or invitees shall have no claim against the Air Force or any officer, agent, employee, contractor, or subcontractor thereof on accounts of such entries provided, however, that; (a) the Lessee shall cooperate with the Air Force to eliminate or reduce, to the extent, practical, any such interference with the Air Force's use of the Land; and (b) the Lessee shall be and remain responsible for all personal injury or property damage caused by the Lessee as a result of the execution of the Agreement or actions taken with respect thereto.
- 11.9 The Lessee shall maintain and make available to the Air Force all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements relating to the Lessee's environmental clean-up and remediation with respect to Lessee's activities on the Land under this Lease. The Air Force will supply similar information to the Lessee with regard to any clean up and remediation by the Air Force with respect to the Land or adjoining property. The Air Force reserves the right to inspect any hazardous waste facility of Lessee and the Lessee records for compliance with Federal, State, local laws, regulations, and other requirements relating to the generation, handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the Air Force to appropriate regulatory agencies, as required by applicable law. The Lessee will be liable for the payment of any fines and penalties that may accrue as a result of the actions of the Lessee.
- 11.10 The Lessee shall have a completed and approved plan prior to commencement of operations on the Land for responding to hazardous waste, fuel, and other chemical spills. Such plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements and shall be approved by all agencies having regulatory jurisdiction over such plan to the extent required. The plan shall be independent of Air Force spill prevention and response plans. Except for initial fire response and/or spill containment, the Lessee shall not rely on use of Air Force personnel or equipment in execution of its plan. The Lessee shall file a copy of the approved plan and approved amendments thereto with the Air Force within fifteen (15) days of the Term Beginning Date. Should the Air Force provide any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of the Lessee or because the Lessee was not, in the opinion of the Air Force, conducting timely cleanup actions, the Lessee agrees to reimburse the Air Force for its cost in accordance with all applicable laws and regulations. Further, to the extent required by law

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and applicable regulations, the Lessee agrees to comply with the requirements of the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001-11050) and the Pollution Prevention Act (42 U.S.C. § 13101-13109).

- 11.11 Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Lessee shall prepare a plan for storage, mixing and application of pesticides ("Pesticide Management Plan"). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, State, and local pesticide requirements. The Lessee shall store, mix, and apply all pesticides within the Land only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.
- 11.12 The Lessee shall comply with all requirements of the Federal Water Pollution Control Act (FWPCA), the National Pollutant Discharge Elimination System (NPDES), and any applicable State or local requirements. If the Lessee discharges wastewater to a publicly owned treatment works, the Lessee must submit an application for its discharge ("Pretreatment Permit Application") prior to the Term Beginning Date. The Lessee will be responsible for meeting all applicable wastewater discharge permit standards. Any wastewater discharge by the Lessee under the authority of any NPDES permit, pretreatment permit or any other permit issued to the Lessee must be with the consent of Air Force. The Lessee or its representatives, agents or contractors shall make no use of any septic tank installed on the premises. The Lessee agrees to inform and coordinate with the Air Force regarding all wastewater discharge activities.
- 11.13 The Lessee shall notify the Air Force of the Lessee's intent to possess, store, or use any licensed or licensable source or by-product materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of the Lessee's intent to possess, use, or store radium; and of the Lessee's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the premises. Upon notification, the Air Force may impose such requirements, including prohibition of possession, use, or storage, as deemed necessary to adequately protect human health and the environment. Thereafter, the Lessee must notify the Air Force of the presence of all licensed or licensable source or by-product materials, of the presence of all radium, and the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that the Lessee need not make either of the above notifications to the Air Force with respect to source and by-product material which is exempt from regulation under the Atomic Energy Act.
- 11.14 The Lessee shall not remove or disturb or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Land, the Lessee shall immediately notify the Air Force and protect the site and the material from further disturbance until the Air Force gives clearance to proceed. The Air Force represents that it has no knowledge of any such artifacts, relics, remains or objects on the Land. The Air

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Force shall cooperate with the Lessee to avoid material interference or delay with respect to the Lessee's use of the Land pursuant hereto and the Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS

- 12.1 The Lessee shall at all times during the term of this Lease faithfully observe and comply with, at its sole cost and expense, the provisions of all Federal, State and local laws, rules, regulations, orders, ordinances, and other Air Force standards and requirements which may be applicable to the Land, particularly those provisions concerning the protection of the environment and pollution control and abatement and occupational safety and health, whether such provisions are now in force or may, at any time in the future, be enacted or directed and, by law, become applicable to and enforceable against the Land.

13. GENERAL INDEMNIFICATION BY LESSEE

- 13.1 The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to the possession and/or use of the Land or the activities conducted by the Lessee under this Lease. The Lessee expressly waives all claims against the Air Force for any such loss, damage, personal injury or death caused by or occurring as a consequence of such possession and/or use of the Land by the Lessee or the conduct of activities or the performance of responsibilities under this Lease. The Lessee further agrees to indemnify, save, and hold harmless the Air Force, its officers, agents and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, claimed on account of or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of the Land or any activities conducted or services furnished in connection with or pursuant to this Lease, and all claims for damages by the Lessee against the Air Force arising out of or related to their tenancy.

14. INSURANCE/REIMBURSEMENT

- 14.1 The Lessee shall bear all risk of loss or damage or destruction to the Land, including any building(s), improvements, fixtures or other property, arising from any causes whatsoever, provided, however, that any loss, damage or destruction caused by the acts of the Air Force shall be the responsibility of the Air Force to the extent not covered by insurance required to be carried by Lessee under the Agreement.
- 14.2 The lessee shall obtain comprehensive general liability insurance on an "occurrence basis" (provided such coverage is reasonably obtainable) against claims for "personal injury," including without limitation, bodily injury, death or property damage, occurring upon, in or about the Land including any buildings thereon and adjoining sidewalks, streets, and passageways, such insurance to afford immediate minimum protection at the time of the Term Beginning Date, and at all times during the term of this Lease, with limits of liability in amounts approved from time to time by the Air Force, but not less than \$_____ in the event of bodily injury and death to any one or more persons in one accident, and not less

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than \$ _____ for property damage. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of any person or organization, or involving any owned, non-owned, leased or hired automotive equipment in connection with the Lessee's activities. The insurance carried and maintained by the Lessee pursuant to this Section shall name the Air Force as an additional insured, and provide coverage to protect the Air Force from any damage and liability for which the Lessee is liable or responsible or agrees to hold harmless and indemnify the Air Force under this Lease. Proceeds under all policies of insurance carried and maintained to provide the coverage required by this Section 14.2. shall be available only for that purpose.

- 14.3 If and to the extent required by law, Lessee shall maintain workers' compensation and employer's liability or similar insurance in form and amounts required by law.
- 14.4 All policies of insurance which this Lease requires the Lessee to carry and maintain or cause to be carried or maintained pursuant to this Section 14 shall be effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Lease, issued by insurers of recognized responsibility. All policies issued by the respective insurers for comprehensive general liability insurance and for the broad form of extended coverage insurance provided for above in this Section shall be for the mutual benefit of the Air Force and the Lessee and will name the Air Force as an additional insured. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Air Force or any other person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Air Force of written notice thereof; provide that the insurer shall have no right of subrogation against the Air Force; and be reasonably satisfactory to the Air Force in all respects. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) days' written notice to the Air Force. The Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Lessee under this Section 14 will constitute a failure to comply with the terms of the Lease, and the Air Force, shall have the right to terminate the Lease for default and breach pursuant to Section 8 upon receipt of any such cancellation notice, but only if the Lessee fails to cure such noncompliance to the extent allowed under Section 8.
- 14.5 The Lessee shall deliver or cause to be delivered upon execution of this Lease (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Section 14), at the Air Force's option, a certified copy of each policy of insurance required by the Lease as soon as each such policy is made available by the insurer, or a certificate of insurance evidencing the insurance required by the Lease, or both.

15. CONSTRUCTION OF IMPROVEMENTS, INSTALLATIONS AND ALTERATIONS

- 15.1 This Lease is subject to and conditioned on the Lessee constructing the Project in accordance with the Agreement. All matters of ingress, egress, contractor haul routes,

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construction activity and disposition of excavated material in connection with the Project shall be coordinated with base/installation personnel, and shall be subject to the terms of this lease and the Agreement.

- 15.2 During the term of this Lease, the Lessee shall have the right at its expense to install such of its own machinery and equipment and to attach such of its own removable fixtures in or upon the Land as may be necessary for its use of the Premises pursuant to this Lease.
- 15.3 All construction, repair, modification, alterations, installations or additions shall be in accordance with the applicable Federal, State and local laws and ordinances and without cost or expense to the Air Force.

16. UTILITIES AND SERVICES

- 16.1 The Lessee will be responsible for utilities and services on the Land.

17. NOTICES

- 17.1 Whenever the Air Force or the Lessee shall desire to give or serve upon the other any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Lease or with respect to the Land, each such notice, demand, order, or direction shall be in writing. All notices delivered by facsimile shall be subsequently confirmed by sending a copy by overnight courier or by U.S. certified mail no later than the next following day, addressed as follows or at such other address or addresses as the Air Force or the Lessee may designate by notice given by certified mail:

If to the Lessee: _____

If to the Air Force: _____

18. ASSIGNMENTS, SUBLEASES AND LICENSES

- 18.1 Any assignment, sublease or license shall be in accordance with Section 19 hereof and Section 3.2 of the Agreement.
- 18.2 The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the Land, nor sublet the Land or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the express prior written consent of the Air Force or as provided in Section 19 hereof or upon execution by a mortgagee of its rights and remedies under its mortgage.

19. LIENS AND MORTGAGES

- 19.1 Any lien or mortgage shall be in accordance with this Lease.

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- 19.2 During the term of this Lease, the Lessee may encumber its interest in the Land by way of one or more loans secured by a mortgage or deed of trust subject to Section 19.3 below. The proposed holder of any mortgage must be approved by the Air Force prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed provided, however, that the Air Force shall approve any mortgagee that is a bank, institutional lender or investor, insurance company or other lender providing financing from or through the use of customary capital or lending markets for similar office projects. Any loan may be further secured by a conditional assignment of this Lease to the mortgagee. The Air Force agrees to execute a consent to the conditional assignment of this Lease for financing purposes in form reasonably acceptable to any approved mortgagee and from time to time to execute an Estoppel Certificate and any other similar documentation as required by the approved mortgagee to certify as to the status of this Lease and to the performance of the Lessee hereunder as of the date of such certification.
- 19.3 No mortgage or deed of trust shall extend to or affect the fee, the remainder interest or the estate of the Air Force in the Land, but may extend to or affect the leasehold interest of the Lessee in the Land and the ownership if any, by the Lessee of the Project. No mortgage or deed-of-trust shall be binding upon the Air Force in the enforcement of its rights and remedies under the Lease and by law provided, unless, and until a copy thereof shall have been delivered to the Air Force and such mortgage or deed of trust is authorized in accordance with the provisions of this Section 19.

20. DISPUTES

- 20.1 Except as otherwise provided in this Lease, any dispute between the Air Force and the Lessee arising under this Lease shall be resolved in accordance with the purpose and intent of the Agreement.
- 20.2 Before or in conjunction with pursuing any remedy which is available to it under law, by mutual agreement, submit the dispute to an alternative dispute resolution procedure authorized by the Administrative Dispute Resolution Act of 1966, P.L. No. 104-320 (5 U.S.C. §§571, et.seq.)
- 20.3 Except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the _____ (appointed representative of the Department of the Air Force) who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the _____ (appointed representative of the Department of the Air Force) shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the _____ (Real Estate Directorate) a written appeal. The decision of the _____ Command or authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this lease as limiting judicial review of any such decision to cases where

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fraud by such official or his representative or board is alleged: provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by this substantial evidence. In connection with any appeal proceeding under this clause, the Lessee shall proceed diligently with the performance of the lease and in accordance with the decision of the _____(appointed representative of the Department of the Air Force).

20.4 This “Disputes” clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph 21.2 above. Nothing in this lease, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.

20.5 Judicial Review. The Lessee or the Air Force, after exhausting the administrative remedies specified in Condition 21.4 above, may pursue any remedy available to it under the law.

21. AMENDMENTS

21.1 This Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of the respective Parties, so long as such amendment is in conformance with and/or does not conflict with any terms of the Agreement.

IN WITNESS WHEREOF, I have set my hand to this Lease this _____ day of _____.

By: _____

Title: _____

This Lease is executed by the Lessee this _____ day of _____.

By: _____

Title: _____

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APPENDIX E-2, Exhibit G

**Termination and Release of Real Estate Building
and/or Ground Lease**

Whereas, the parties hereto have signed that certain Lease entitled _____
(Real Estate Building Lease or Real Estate Ground Lease), dated _____; and

Whereas, said Lease is recorded in the real estate records of Los Angeles County, California in
Book _____, Page _____ as Document No. _____; and

Whereas all responsibilities and obligations of said lease have been performed to the satisfaction
of all parties;

Now, therefore, both parties do hereby forever release and discharge each other from any further
obligation or responsibility under said Lease; and hereby release each other from all liability
under said Lease for any and all claims, known or unknown.

EXECUTED this the ____ day of _____, 2001.

Secretary of the Air Force, United States of
America

By: _____
Name: _____
Its: _____

STATE OF _____)
COUNTY OF _____)

This instrument was acknowledged before me this day of _____, 2001 by
_____, Deputy Assistant Secretary of the Air Force (Installations), on behalf of the
Secretary of the Air Force, United States of America.

Notary Public

My commission expires:

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**APPENDIX E-2, Exhibit H
QUITCLAIM DEED**

The Secretary of the Air Force, United States of America ("Grantor"), for consideration paid, quitclaims to _____, a _____ ("Grantee"), whose address is _____, all existing facilities and associated improvements (the "Improvements") located on that certain land in El Segundo (and/or Hawthorne and Sun Valley), CA, more particularly described in Exhibit A attached hereto and by reference made a part hereof for all purposes (the "Real Property"), together with all rights privileges, easements, hereditaments, and appurtenances pertaining to such Improvements, including any and all fixtures currently attached to and located thereon.

This Quitclaim Deed is being made in conjunction with and is subject to a certain Department of the Air Force Lease of Property on Los Angeles Air Force Base, CA ("Lease") of even date herewith by and between Grantor, as Lessor, and Grantee, as Lessee, by which Grantor has leased the Land to Grantee in accordance with the terms thereof. A memorandum of the Lease is recorded in the real estate records of Los Angeles County, California on the date of recording of this Quitclaim Deed in Book _____, Page _____ as Document No. _____.

This conveyance is made subject and subordinate to those exceptions set forth on Exhibit B attached hereto and made a part hereof for all purposes.

EXECUTED this the ____ day of _____, 2001.

Secretary of the Air Force, United States of
America

By: _____
Name: _____
Its: _____

STATE OF _____)
COUNTY OF _____)

This instrument was acknowledged before me this day of _____, 2001 by _____, Deputy Assistant Secretary of the Air Force (Installations), on behalf of the Secretary of the Air Force, United States of America.

Notary Public

My commission expires:

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**Appendix E-2, Exhibit J
ESCROW INSTRUCTIONS**

1. Time is of the essence of these instructions. If this escrow is not in a condition to close by the Close of Escrow Date as provided for herein and written demand for cancellation is received by you from any principal to this escrow after said date, you shall act in accordance with Paragraph 7 of the General Provisions. If no conflicting instruction or demand for cancellation is made, you will proceed to close this escrow when the principals have complied with the escrow instructions. In the event one or more of the General Provisions are held to be invalid in judicial proceedings, those remaining will continue to be operative. Any amendments of or supplements to any instructions affecting escrow must be in writing. You are authorized to order demands for, and pay at the close of escrow any encumbrances of record necessary to place title in the condition called for without further authorization. You are further authorized, prior to the close of escrow, to pay from funds on deposit any fees necessary to obtain any demand and/or report as may be required in this escrow and at the close of escrow charge the parties as appropriate. The principals will hand you any funds and instruments required from each respectively to complete the escrow. Interest on any new financing may begin to accrue on the date loan funds/proceeds are disbursed by the new lender, and borrower agrees to pay same in accordance with lender's instructions.
2. You are instructed to deliver and/or record all documents and disburse all funds when you can comply with these instructions and issue any title insurance policy as called for herein. These instructions, together with any amendments and/or supplements, may be executed in counterparts and together shall constitute one and the same document. If these instructions relate to a sale, buyer agrees to buy and seller agrees to sell upon the terms and conditions hereof. All documents, balances and statements due the undersigned are to be mailed to the respective addresses shown herein, unless otherwise directed. In the event that any party to this escrow utilized facsimile transmitted signed documents, all parties hereby agree to accept and hereby instruct the escrow holder to rely upon such documents as if they bore original signatures. Buyer and seller further acknowledge that any documents to be recorded bearing non original (facsimile) signatures will not be accepted for recording by the county recorder.
3. The phrase "close of escrow" (or COE) as used in this escrow means the date on which documents are recorded, unless otherwise specified.
4. Assume a 30 day month in any proration herein provided, and unless otherwise instructed, you are to use the information contained in the latest available tax statement, including any supplemental taxes of record, rental statement as provided by seller and beneficiary's or association statements delivered into escrow for proration purposes.
5. Upon close of escrow you are instructed to charge our respective accounts the costs attributable to each, including but not limited to costs as provided for herein.

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6. Recordation of any instruments delivered through this escrow, if necessary or proper for the issuance of the policy of title insurance called for, is authorized. No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.
7. If demand to cancel is submitted after the Close of Escrow Date, any principal so requesting you to cancel this escrow shall file notice of demand to cancel in your office in writing. You shall within three (3) working days thereafter mail by certified mail one copy of such notice to each of the other principals at the address stated in this escrow. Unless written objection thereto is filed in your office by a principal within fifteen (15) calendar days after the date of such mailing, you are instructed to cancel this escrow. If this is a sale escrow, you may return the lender's papers and/or funds upon lender's demand.
8. In the event that this escrow is cancelled, any fees or charges due the Company including cancellation fees and any expenditures incurred or authorized shall be paid from funds on deposit unless otherwise specifically agreed to or determined by a court of competent jurisdiction. Upon payment thereof, return documents and monies to the respective parties depositing same, or as ordered by the court, and void any executed instruments.
9. If there is no written activity by a principal to this escrow within any six-month period after the Close of Escrow Date set forth herein, the Company may, at its option, terminate its agency obligation and cancel this escrow, returning all documents, monies or other items held, to the respective parties entitled thereto, less any fees and charges as provided herein.
10. If, for any reason, funds are retained or remain in escrow after the closing date, you may deduct there from a reasonable charge as custodian, of not less than \$25.00 per month, unless otherwise specified.
11. In the event that you should receive or become aware of conflicting demands or claims with respect to this escrow, or the rights of any of the parties hereto, or any money or property deposited herein, you shall have the absolute right at your option to discontinue any or all further acts until such conflict is resolved to your satisfaction.
12. In the event that any Offer to Purchase, Deposit Receipt, or any other form of Purchase Agreement is deposited in this escrow, you, as escrow holder, are not to be concerned with the terms of such document and are relieved of all responsibility in connection therewith. The foregoing is not applicable in any transaction in which the Company has specifically agreed to accept an Offer to Purchase, Deposit Receipt or other form of Purchase Agreement as escrow instructions. In any event, you are not to be concerned or liable for items designated as "memoranda" in these escrow instructions nor with any other agreement or contract between the parties.
13. The parties hereto, by execution of these instructions acknowledge that the escrow holder assumes no responsibilities or liability whatsoever for the supervision of any act or the performance of any condition which is a condition subsequent to the closing of this escrow.

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14. In the absence of instructions to the contrary, you are hereby authorized to utilize wire services, overnight, next day, or other expedited delivery services (as opposed to the regular U.S. Mail) and to charge the respective party's account accordingly.
15. Concerning any real property involved in this transaction you are released from and shall have no liability, obligation or responsibility with respect to (a) withholding of funds pursuant to Section 1445 of the Internal Revenue Code of 1986 as amended, and to Sections 18662 and 18668 of the California Revenue and Taxation Code, (b) advising the parties as to the requirements of said Section 1445, (c) determining whether the transferor is a foreign person or a non-resident under such Section, nor (d) obtaining a non foreign affidavit or other exemption from withholding under said Sections nor otherwise making any inquiry concerning compliance with such Sections by any party to the transaction.
16. If you demand to pay in full a revolving line of credit or equity line loan, you are hereby instructed on my behalf and for my benefit, to request that the lender issuing said demand cancel said revolving line or equity line of credit.
17. You are authorized to furnish to any affiliate of the Company, any attorney, broker or lender identified with this transaction or any one acting on behalf of such lender any information, instructions, amendments, statements, or notices of cancellation given in connection with his escrow. If any check submitted to escrow is dishonored when presented for payment, you are authorized to notify all principals and/or their respective agents of such non payment.
18. All notices, change of instructions, communications and documents are to be delivered in writing to the office of the Company, as set forth herein.
19. All funds received in this escrow shall be deposited with other escrow funds in one or more non-interest bearing demand accounts of the Company in any state or federal bank or any state or federal savings and loan association ("the depository institutions") and may be transferred to any other such accounts.

The parties to this escrow acknowledge that while these accounts do not bear interest, because of these and other banking relationships with the depository institutions, the Company and its affiliates may receive from some of the depository institutions an array of banking services, accommodations or other benefits. The company and its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from some of the depository institutions. All of such services, accommodations and other benefits shall accrue, directly or indirectly, to the Company and its affiliates and they shall have no obligation to account to the parties to this escrow for the value of such services, accommodations or other benefits. All disbursements shall be made by the Company check, unless otherwise instructed.

The Company shall not be responsible for any delay in closing if funds received by escrow are not available for immediate withdrawal. The Company may, at its option, require concurrent instructions from all principals prior to release of any funds on deposit in this escrow.

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20. You are authorized to destroy or otherwise dispose of any and all documents, papers, instructions, correspondence and other material pertaining to this escrow at the expiration of six (6) years from the close of escrow or cancellation thereof, without liability and without further notice.

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IMPORTANT NOTICE

Except for wire transfers, funds remitted to this escrow are subject to availability requirements imposed by Section 12413.1 of the California Insurance Code. CASHIER'S, CERTIFIED or TELLER'S checks, payable to the Company are generally available for disbursement on the next business day following the date of deposit.

Other forms of payment may cause extended delays in the closing of your transaction pursuant to the requirements imposed by State Law.

(Wire transfer information available upon request)

ALL PARTIES TO THIS ESCROW ACKNOWLEDGE THAT THE COMPANY DOES NOT PROVIDE LEGAL ADVICE NOR HAS IT MADE ANY INVESTIGATION, REPRESENTATIONS OR ASSURANCES WHATSOEVER REGARDING THE LEGAL ASPECTS OR COMPLIANCE OF THIS TRANSACTION WITH ANY TAX, SECURITIES OR ANY OTHER STATE OR FEDERAL LAWS. IT IS RECOMMENDED THAT THE PARTIES OBTAIN INDEPENDENT LEGAL COUNSEL AS TO SUCH MATTERS.